

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

JOSE G. HERNANDEZ,

Debtor.

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Case No. 00-42330-BJH-13

MEMORANDUM OPINION

Hopkins Furniture Company (“Hopkins”) filed a motion for valuation of its collateral pursuant to Bankruptcy Rule 3012. A dispute exists between Jose Hernandez (the “Debtor”) and Hopkins with respect to the value of Hopkins’ collateral, a 36" Zenith television (the “Television”). The Court conducted a hearing on the motion on January 4, 2001.

A motion for valuation constitutes a core matter over which this Court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(B) and 1334. This Memorandum Opinion contains the Court’s findings of fact and conclusions of law as required by Bankruptcy Rule 7052 and 9014.

Hopkins holds a perfected vendor’s lien in the Television. Debtor purchased the Television from Hopkins on May 17, 1999 for \$1,055.95. Debtor filed this Chapter 13 case on May 9, 2000. Hopkins filed a proof of claim against the Debtor in the amount of \$1126.64, asserting a secured claim of \$844.76.

Hopkins contends that the Television is under valued in the Debtor’s Chapter 13 plan (the “Plan”) and should properly be valued at \$844.76 in the Plan. The Debtor contends that the Television is properly valued in the Plan at \$400.00.

Resolving this dispute requires that the Court apply the Supreme Court's decision in *Associates Commercial Corp. v. Rash*, 520 U.S. 953 (1997). The *Rash* Court held that under section 1325(a)(5)(B), "the value of the property (and thus the amount of the secured claim under § 506(a)) is the price a willing buyer in the debtor's trade, business or situation would pay to obtain like property from a willing seller." *Id.* at 960. The Court further stated that "[i]n sum, under § 506(a), the value of property retained because the debtor has exercised the § 1325(a)(5)(B) 'cram down' option is the cost the debtor would incur to obtain a like asset for the same 'proposed . . . use.'" *Id.* at 965.

Here, Carl Duncan ("Duncan"), Hopkins' credit manager, testified that he believed that if the Debtor had surrendered the Television on the petition date, Hopkins could have resold the Television for approximately \$850.00. He further testified that Hopkins would likely have provided a thirty day warranty to a prospective purchaser given that the Television would be sold as a used television. Duncan further testified that if the Court adopted the local practice of the Chapter 13 bar of valuing personal property at a rate of 20% depreciation per year, the Television would be valued at \$844.76 (80% of the purchase price one year earlier of \$1,055.95). Finally, Hopkins asks this Court to formally adopt this 20% per year depreciation rubric as its valuation methodology for all personal property in Chapter 13 cases.

Jerry Lavender ("Lavender"), an insurance appraiser/adjustor retained by the Debtor, testified that pawnshops were the largest source for used televisions in the marketplace and that if a willing buyer wanted to buy a used television, that buyer would likely go to a pawnshop to make his purchase. Lavender testified that he investigated the prices for used televisions like the Television at three local pawnshops. Based upon his investigation and experience, Lavendar

testified that the Television had a liquidation value of \$175.00 (the price a pawnshop would be willing to pay to buy a used television like the Television) and an average retail value of \$400.00 (the price a pawnshop would expect to receive for a used television like the Television).

Lavendar's valuation report is dated October 6, 2000.

The parties disagree as to the proper date of valuation. Hopkins apparently contends that the Television should be valued as of the petition date, notwithstanding the fact that the dispute concerns the value of the Television in the Plan.¹ The Court disagrees. Given that this valuation dispute concerns the proper value of the Television in the Plan, section 1325(a)(5)(B)(ii) directs the Court to determine value as of the effective date of the Plan.

However, the Code, read as a whole, protects Hopkins. As of the petition date, Hopkins held an allowed secured claim based on the value of the Television at that time. 11 U.S.C. §§ 501, 502, 506(a). Since the Debtor elected to retain and use the Television, Hopkins was entitled to adequate protection of its interest in the Television during the pendency of this case. 11 U.S.C. §§ 361, 362(d)(1).

The Debtor's preliminary plan valued the Television at \$500. *See* Preliminary Chapter 13 Plan, filed May 24, 2000. This value was apparently not disputed by Hopkins.² This value

¹The Court infers this from the fact that Hopkins is only prepared to depreciate the Television by 20% to reach its value of \$844.76. Given Hopkins' representation that the informal practice of the bar is to depreciate collateral by 20% per year, the Court concludes that Hopkins contends that the Television must be valued as of the petition date – which was approximately one year after the Debtor's purchase of the Television.

²Hopkins' motion for valuation was not filed until September 8, 2000 and recites that the "Debtor's Chapter 13 Plan under values the Movant's collateral."

measured Hopkins' interest in the Television that was entitled to adequate protection prior to confirmation.³

However, as previously noted, for purposes of confirmation of the Plan, section 1325(a)(5)(B)(ii) requires that Hopkins receive "value, as of the effective date of the plan, . . . [that] is not less than the allowed amount of such claim." 11 U.S.C. §1325(a)(5)(B)(ii). In turn, section 506(a) provides that Hopkins' claim is a secured claim to the extent of the value of the Television and that such value "shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, *and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.*" 11 U.S.C. § 506(a)(emphasis added). As this Court has previously held in *In re Davis*, 215 B.R. 824 (Bankr. N.D. Tex. 1997), when determining the value of collateral, and hence the amount of an allowed secured claim, for purposes of cram down of a chapter 13 plan, the Court must value the collateral as of the effective date of the Plan. *Id.* at 825.

The Debtor's plan is currently set for confirmation hearing on February 1, 2001. Hopkins' motion for valuation was obviously set prior to confirmation. Neither party offered evidence of the value of the Television as of the effective date of the Plan. However, since both parties agree that the Television is a depreciating asset and confirmation is but a few weeks away, the Court will value the Television based on the record currently before it. The Court will not address the remaining cram down requirement of section 1325(a)(5)(B)(ii) – does the Plan propose to make deferred cash payments to Hopkins totaling the present value of its allowed

³To date, Hopkins has not sought adequate protection of its interest in the Television.

secured claim – at this time. If necessary, this issue will be addressed at the confirmation hearing.

Applying *Rash* here, the Court finds that the Television will have a value of no more than \$400.00 on the effective date of the Plan.⁴ On this record, the Court further finds that the Debtor would incur a cost of \$400.00 to obtain a like television for his family's use on or about the anticipated effective date of the Plan.

With respect to Hopkins' request that this Court adopt a bright line rule of valuation for personal property in Chapter 13 cases, the Court must decline. While appealing, and while adopting a valuation "rule" applicable to all consumer cases could minimize expense and facilitate the resolution of these types of cases, the Court cannot prejudge valuation issues in individual cases. The Court encourages informal "rules" among the consumer bar with respect to these types of valuation issues to assist all parties in resolving consumer cases as expeditiously and as inexpensively as possible. However, the Court must remain free to adjudicate individual disputes among the parties, like this one, when informal "rules" produce inequitable results or when the parties simply cannot agree after good faith efforts.

⁴Applying the "20% depreciation per year" rubric proposed by Hopkins to a valuation of the Television as of the effective date of the Plan, the difference between Hopkins' value and the Debtor's value shrinks to approximately \$250.00 (or \$633.57 (as of May 2001) vs. \$400.00).

A separate order will be entered valuing the Television at \$400.00 as of the effective date of the Plan.

Signed: January 17, 2001.

Barbara J. Houser
United States Bankruptcy Judge